

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KIM LAWRENCE SHYVERS, )  
 ) CASE NO. C12-0959-MJP-MAT  
Petitioner, )  
 )  
v. )  
 ) REPORT AND RECOMMENDATION  
VINCENT GOLLOGLY, et al., )  
 )  
Respondents. )  
\_\_\_\_\_ )

INTRODUCTION AND SUMMARY CONCLUSION

Kim Lawrence Shyvers, proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, naming Dr. Vincent Gollogly and his public defenders, Mark Adire and Ben Goldsmith, as respondents. (Dkt. 5.) Petitioner is currently confined within the King County Correctional Facility awaiting final adjudication of charges filed against him in King County Superior Court. See [www.dw.courts.wa.gov](http://www.dw.courts.wa.gov) (King County Sup. Ct. No. 10-1-03816-3). See also *Shyvers v. Adire*, No. C12-865-RSM-BAT (Dkt. 16) (describing history of state criminal proceedings). Petitioner raises a variety of complaints regarding his ongoing state criminal proceedings and seeks this Court's intervention in the proceedings,

01 including, *inter alia*, the appointment of new counsel and dismissal of the state criminal  
02 charges. The Court recommends that this case be DISMISSED.<sup>1</sup>

03 Petitioner seeks this Court's intervention in ongoing state criminal matters. However,  
04 generally, the federal courts will not intervene in pending state criminal proceedings absent  
05 extraordinary circumstances where the danger of irreparable harm is both great and immediate.  
06 *See Younger v. Harris*, 401 U.S. 37, 53-54 (1971). "[O]nly in the most unusual circumstances  
07 is a defendant entitled to have federal interposition by way of injunction or habeas corpus until  
08 after the jury comes in, judgment has been appealed from and the case concluded in the state  
09 courts." *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972); *see also Carden v. Montana*, 626  
10 F.2d 82, 83-84 (9th Cir. 1980). Petitioner here makes no showing of extraordinary  
11 circumstances that would justify the Court's intervention in his ongoing state criminal  
12 proceedings. *See also Shyvers*, C12-865 (Dkt. 16 at 5-6) (noting that review of King County  
13 Superior Court's on-line case summary reveals that plaintiff has had an adequate opportunity to  
14 raise his claims in the state proceedings).

15 Additionally, a federal court "lacks jurisdiction to issue a writ of mandamus to a state  
16 court." *Demos v. U.S. Dist. Court for E. Dist. of Wash.*, 925 F.2d 1160, 1161-62 (9th Cir.  
17 1991) (citing 28 U.S.C. § 1651). Accordingly, petitions requesting that a federal court  
18 "compel a state court to take or refrain from some action[]" are "frivolous as a matter of law."  
19 *Id.*

20 For the reasons stated above, the Court recommends that this matter be DISMISSED

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22 <sup>1</sup> The Court also makes this same recommendation in an almost identical habeas matter filed by  
petitioner in this Court. *See Shyvers v. King County Jail*, No. C12-899-MJP-MAT.

01 without prejudice. The Court recommends petitioner not be afforded an additional  
02 opportunity to amend his petition because “it is absolutely clear that no amendment can cure the  
03 defect.” *Lucas v. Dep’t of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995). A proposed order  
04 accompanies this Report and Recommendation.

05 DATED this 8th day of August, 2012.

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08 Mary Alice Theiler  
09 United States Magistrate Judge  
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